



POLICE DEPARTMENT

February 27, 2015

MEMORANDUM FOR: Police Commissioner

Re: Police Officer Daniel Drange
Tax Registry No. 926791
Midtown South Precinct
Disciplinary Case No. 2013-9379

Police Officer John Maxcy
Tax Registry No. 927160
Midtown South Precinct
Disciplinary Case No. 2013-9380

The above-named members of the Department appeared before me on November 25, 2014, charged with the following:

Disciplinary Case No. 2013-9379

1. Said Police Officer Daniel Drange, assigned to Midtown Precinct South, on or about between December 2, 2011 and October 16, 2012, within New York County, did fail and neglect to submit eighty-five (85) Parking (A) Summonses, fifteen (15) Moving (B) Summonses, and seven (7) Criminal Court (C) Summonses directly to the desk officer at the end of tour on the date of issuance.

Interim Order No. 23 s. 2011 – SUMMONSES

2. Said Police Officer Daniel Drange, assigned to Midtown Precinct South, on or about between December 2, 2011 and October 16, 2012, within New York County, did fail and neglect to enter that [sic] details in his Activity Log regarding the issuance of the abovementioned eighty-five (85) Parking (A) Summonses.

P.G. 209-07, Step 13 – SUMMONSES

Disciplinary Case No. 2013-9380

1. Said Police Officer John Maxcy, assigned to Midtown Precinct South, while on-duty, on or about between December 20, 2011 through September 22, 2012, within New York County, did fail and neglect to submit seventy-nine (79) Parking (A) Summonses, sixteen (16) Moving (B) Summonses, and three (3) Criminal Court (C) Summonses directly to the desk officer at the end of tour on the date of issuance.

Interim Order No. 23 s. 2011 – SUMMONSES

2. Said Police Officer John Maxcy, assigned to Midtown Precinct South, while on-duty, on or about between December 20, 2011 through September 22, 2012, within New York County, did fail to enter the details in his Activity Log regarding the issuance of the abovementioned seventy-nine (79) Parking (A) Summonses.

P.G. 209-07, Step 13 – PARKING SUMMONSES – GENERAL PROCEDURE

The Department was represented by Samuel Yee, Esq., Department Advocate's Office.

Both Respondents were represented by Michael Martinez, Esq.

Both Respondents, through their counsel, entered pleas of Guilty to the subject charges and testified in mitigation of the penalty. A stenographic transcript of the mitigation hearing record has been prepared and is available for the Police Commissioner's review.

DECISION

Disciplinary Case No. 2013-9379

Respondent Drange, having pleaded Guilty, is found Guilty as charged.

Disciplinary Case No. 2013-9380

Respondent Maxcy, having pleaded Guilty, is found Guilty as charged.

SUMMARY OF EVIDENCE PRESENTED IN MITIGATION

Both Respondents are 14-year members of the Department and both have been assigned to patrol duties at the Midtown South Precinct since graduating from the Police Academy. During the time that they have been partnered together, they have generally issued about 15 summonses per month each. During the time period delineated in the charges, they would turn in their summonses at the front desk in batches on a weekly or monthly basis which they believed was consistent with the common practice in their command. Respondent Drange explained that doing this made it easier for each of them to prepare weekly and monthly activity reports.

Respondents testified that on all of the occasions when they turned in their summonses in batches at the front desk, no desk officer ever commented to them that they were late in submitting their summonses, even though sometimes the summonses they were handing in had been issued up to 59 days earlier. Respondent Maxcy testified that he assumed that if his action of submitting summons in batches on a weekly or monthly basis was improper, a supervisor would have informed him of this. It was not until they were interviewed by the precinct's integrity control officer (ICO) that Respondents became aware that an Interim Order had been issued which mandated that summonses must be turned in on the day of issuance. [The parties stipulated this Interim Order was issued on May 20, 2011.] Regarding their failure to enter details in their Activity Logs regarding the parking (A) summonses they issued, Respondents noted that no supervisor ever "scratched" their Activity Logs about this failure and that they always entered details in their Activity Log regarding all of the B and C summonses they issued.

On cross-examination, both Respondents acknowledged that new Interim Orders are posted on a bulletin board at their command; that Interim Orders can be accessed on the Department intranet; and that they were responsible to comply with Interim Orders. Ever since

their interviews with the ICO, Respondents have consistently submitted to the desk officer at the end of their tour all of the summonses that they issued during that tour. None of the summonses that they submitted late were dismissed in court or compromised in any way.

PENALTY

In order to determine an appropriate penalty, Respondents' service records were examined. See *Matter of Pell v. Board of Education*, 34 NY 2d 222 (1974). Both Respondents were appointed to the Department on September 29, 2000. Information from their personnel records that was considered in making this penalty recommendation is contained in attached confidential memoranda. Neither of the Respondents has a monitoring record and neither has a formal disciplinary record.

Respondent Drange has pleaded guilty to having neglected to submit 107 summonses in a timely manner during a ten-month period and having failed to enter in his Activity Log the details regarding 85 parking summonses he issued.

Respondent Maxcy has pleaded guilty to neglecting to submit 98 summonses in a timely manner during a nine-month period and failing to enter in his Activity Log the details regarding 79 parking summonses he issued.

The Assistant Department Advocate (the Advocate) recommended that the penalty to be imposed on each Respondent consist of the forfeiture of ten vacation days. The Advocate cited to two prior disciplinary decisions. However, the Advocate's recommended penalty of the forfeiture of ten vacation days was not imposed in either of the cited decisions.

In *Case No. 2011-5370* (Oct. 2, 2012), a 20-year police officer with no prior disciplinary record forfeited 20 vacation days for failing to review and forward to court about 245

summonses over a seven-month period. The misconduct in that case differs substantially from the misconduct that Respondent Drange and Respondent Maxcy committed here in that all of summonses they submitted, albeit tardily, were forwarded to court and adjudicated.

The Advocate also cited to *Case No. 2012-7901* (June 3, 2014), where a 17-year officer with no prior disciplinary record pleaded guilty to failing to scan about 800 to 1,000 summonses into the Electronic Summons Tracking System. In that case, the officer should have, but did not, inform his supervisor that a scanning backlog had developed. Although the Trial Commissioner recommended that the officer forfeit ten vacation days as a penalty, the Police Commissioner reduced the penalty to the loss of five vacation days.

Here, similarly, Respondents should have, but did not, inform their supervisor that they were submitting their summonses in batches on a weekly or monthly basis, not at the end of their tour on the day that a summons was issued. However, the Advocate did not dispute their claim that although they regularly submitted batches of summonses at the front desk, no desk officer ever told them that their submissions were late and that their summonses should have been submitted at the end of their tour on the date they were issued.

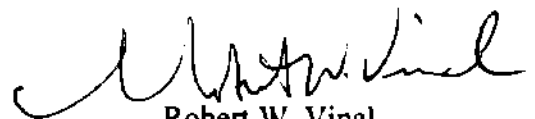
In conclusion, since the Advocate did not dispute Respondent Drange's and Respondent Maxcy's claim that none of their tardily submitted summonses were adversely affected by their delay in handing them in and since after they were instructed on proper procedure they both immediately began submitting all summonses on the day they issued them, it is recommended that each Respondent forfeit a penalty consisting of the loss of five vacation days.

Respectfully submitted,

APPROVED

MAR 25 2015

WILLIAM J. BRATTON
POLICE COMMISSIONER


Robert W. Vinal
Assistant Deputy Commissioner – Trials

POLICE DEPARTMENT
CITY OF NEW YORK

From: Assistant Deputy Commissioner - Trials
To: Police Commissioner
Subject: CONFIDENTIAL MEMORANDUM
POLICE OFFICER [REDACTED]
[REDACTED]

[REDACTED]

For your consideration.



Robert W. Vinal
Assistant Deputy Commissioner - Trials

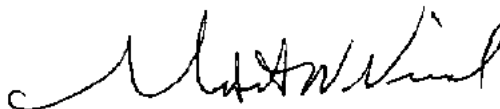
POLICE DEPARTMENT
CITY OF NEW YORK

From: Assistant Deputy Commissioner - Trials
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POLICE OFFICER JOHN MAXCY
TAX REGISTRY NO. 927160
DISCIPLINARY CASE NO. 2013-9380

Respondent received an overall rating of 3.5 on his 2014 performance evaluation, 3.0 on his 2013 evaluation, and 3.5 on his 2012 evaluation. He has been awarded two medals for Excellent Police Duty. [REDACTED]

[REDACTED] He has no monitoring records and no formal disciplinary record.

For your consideration.



Robert W. Vinal
Assistant Deputy Commissioner – Trials